IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 225 OF 2004

Ashok Sadarangani..... .. Applicant.

Versus

Central Bureau of Investigation and Others. .. .. .. Respondents.

Mr.A. M. Sachwani for the Applicant.

Mr. D. R. More, Addl.G.P. for State.

CORAM : A. M. KHANWILKAR, J.

DATED : 10TH SEPTEMBER, 2004.

P.C.:

Heard learned Counsel for the parties.

2. Rule. Rule made returnable forthwith by consent.

3. Mr. More, learned Addl. Government Pleader, waives service of notice for the State.

4. As short question is involved, the Revision Application is taken up for final disposal forthwith

by consent.

5. This revision application takes exception to the order passed by the Court of Sessions for Greater Bombay dated 25th June, 2004 in Misc. Application No. 276 of 2004 in Special Case No.3 of 2004. The Applicant had applied for providing home food while in judicial custody. The trial Court, however, rejected that application by observing that such a prayer can be considered by the Inspector General of Prison. The learned Addl. Government Pleader has fairly brought to my notice an unreported decision of the Division Bench of our High Court decided on 2nd August, 2004 in Criminal Writ Petition No.1438 of 2000. In paragraph 28 of the said decision, the Court has observed on analysing relevant provisions and decisions that the power to order home food in respect of the persons in judicial custody during the trial vests in the Magistrate or the trial Court under Section 167 of the Code of Criminal Procedure and the same is not controlled by virtue of Sections 31 and 32 of the Prisons Act, 1894.

6. If, it is so, the view taken by the trial Court in

rejecting the application of the Applicant herein, cannot be sustained.

7. Accordingly, the same is set aside. Instead of examining the request of the Applicant for the first time before this Court, the appropriate course is to relegate the parties before the trial Court who in turn shall consider the application on its own merits and in accordance with law.

8. The application which is restored and remanded to the file of the trial Court shall be disposed of as expeditiously as possible and preferably within two weeks from the receipt of the writ from this Court.

9. Criminal Revision Application is disposed of accordingly.

10. All Authorities concerned to act on an ordinary copy of this order duly authenticated as true copy by the Office.

Sd/-

(A. M. KHANWILKAR, J.)